

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Samuel I. Cox,

Case No. 19-cv-1956 (JRT/DTS)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Commissioner of Dept. of  
Human Services, *et al.*,

Defendants.

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Samuel I. Cox, MSOP, 1111 Highway 73, Moose Lake, Minnesota 55767, *Pro Se* Plaintiff

Ali Afsharjavan, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1400,  
St. Paul, Minnesota 55101, for Defendants

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Defendants move to dismiss Samuel I. Cox's Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Docket No. 21. Cox has failed to respond to the motion despite multiple extensions of time. The Court therefore recommends that Defendants' motion be granted.

The Court previously dismissed most of Cox's claims except for his claim (on page 5 of the Amended Complaint) [Docket No. 12] for cruel and unusual punishment, which the Court allowed to proceed but (1) only against Defendants in their official capacities and (2) only for prospective injunctive relief. See Order (Mar. 3, 2020), Docket No. 19. Defendants then brought this motion to dismiss the remaining claim. Cox received two extensions of time to respond to the motion. See Orders (Mar. 25 and Apr. 29, 2020), Docket Nos. 30, 32.

Cox did not file any response to Defendants' motion by the June 1, 2020 deadline. His failure to respond constitutes a waiver, and Defendants' motion should be granted.

See *Christensen v. PennyMac Loan Servs., LLC*, 988 F.Supp.2d 1036, 1042 (D. Minn. 2013) (citing cases).

### **RECOMMENDATION**

For the reasons set forth above, the Court RECOMMENDS that Defendants' Motion to Dismiss [Docket No. 21] be GRANTED.

Dated: June 24, 2020

s/ David T. Schultz  
DAVID T. SCHULTZ  
U.S. Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).